

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2825 of 1997

with

SPECIAL CIVIL APPLICATION No.2746 of 1997

with

CIVIL APPLICATION No.9818 of 1998

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For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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ALEMBIC CHEMICALS WORKS LTD.

Versus

ALEMBIC KARMACHARI UNION C/O. SHRI ASHISH ABHYANKAR,ADVOCATE

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Appearance:

1. Special Civil Application No. 2825 of 1997  
NANAVATI ASSOCIATES for Petitioner  
NOTICE SERVED for Respondent No. 1  
MR NR SHAHANI for Respondent No. 11
  2. Special Civil ApplicationNo 2746 of 1997  
MR TR MISHRA for Petitioner  
MR NR SHAHANI for Respondent No. 1
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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 01/04/99

COMMON ORAL JUDGEMENT :

Heard the learned counsel for the parties. A short controversy has been raised in these two petitions.

The petitioners in respective petitions challenge the order dated 14.3.1997, of the Industrial Tribunal No.1, Vadodara, by which it has directed the respondents, 14 workmen to be reinstated unconditionally during the pendency of the reference before it. Special Civil Application No.2825 of 1997 is by Alembic Chemical Works Ltd., the employer and Special Civil Application No.2746 of 1997 is by Alembic Karmachari Union, one of the unions operating amongst the workmen of the company and who has instrumental in arriving at amicable settlement of dispute with workmen and accepted by 357 out of 371 concerned workmen.

2. Brief facts necessary for the present controversy are that on 17.10.1984, the services of 371 casual workers were brought to an end by the company. Reference (IT) No.40 of 1985 was made to adjudicate upon the dispute arising out of those terminations. During pendency of the said dispute, on 1.3.1996, a settlement was offered by the company to all the workmen including the respondents; shorn of details it offered reinstatement with an amount of Rs.35,000/- in lump sum in lieu of back wages or to accept voluntary retirement scheme with specified compensation. This offer was accepted by all, but these 14 respondent- workmen. An application was also made on behalf of the company and the Alembic Karmachari Union, the petitioner in Special Civil Application No.2746 of 1997, to make an award in terms of the said settlement, which was duly signed on behalf of the employer and by the officer of the said union on behalf of workman. However, the terms of settlement were not acceptable to the respondents - 14 workmen. But they moved an application seeking reinstatement by way of interim relief subject to their right to continue with the dispute. Thus, they wanted reinstatement without determination of validity of termination solely because other workmen have been reinstated under the settlement. The primary objection to their non acceptance of the settlement was that on earlier occasions, the management was offered, in addition to reinstatement, much higher amount in lieu of back wages than Rs.35,000/-, now offered. This application has been granted by the Industrial Tribunal by the impugned order which as noticed above unconditionally directing the management to reinstate these 14 workmen.

3. It has been urged by the learned counsel for the petitioners that grant of interim relief amounts to grant of whole relief without deciding the main dispute, whether independent of settlement or in terms of

settlement on the basis of one of the terms of settlement. This results in piecemeal acceptance of settlement by one of the parties and getting relief on that basis.

4. Firstly, no relief which is part of the final relief can be granted by way of interim relief. Secondly, the Labour Court has not considered that by way of this interim relief, industrial peace which has been restored by entering into the settlement with such a large number of concerned workmen agreeing to that, would again be disturbed if the remaining disgruntled workmen are allowed to reap the fruits of such settlement by them to the extent acceptable to them and to keep alive that part of the dispute which does not satisfy them under the settlement. This would unsettle the workmen who have already settled in their restored jobs with no grievance outstanding with these workmen entering the field keeping the dispute alive.

5. It has been urged on the other side vehemently that since all, but 14 workmen have been reinstated, in these circumstances, reinstatement of these workmen must also be taken to be foregone conclusion and if the same has been ordered by way of interim relief no interference is called for. It was further urged by Shri Shahani that merely because a large number of workmen have accepted the settlement it does not bind the respondents to accept the settlement, which they genuinely feel that it is not in the interest of the workmen. Shri Shahani also sought to urge on the merits of the fairness or justness of the settlement which is yet to be considered by the Industrial Tribunal as a prayer has been made to make the award in terms of the settlement.

6. Having carefully considered the rival contentions and perused the order of the interim relief, I am of the opinion that the order cannot be sustained. Ordinarily, relief by way of reinstatement of an employee, whose services have been terminated is not granted unless adjudication as to the validity of termination is made. The fact that the settlement has been arrived at between the parties is not accepted by the disputing workmen. That is to say, the respondents repudiate the validity of the settlement said to have been arrived at between the employer and rival union and which has been accepted by vast majority of concerned workmen. The interim relief has been granted solely on the basis that the other workmen have been offered employment under the settlement while the respondents have remained out of employment. The Industrial Tribunal has also referred that not

granting reinstatement would result in discrimination between those who have been reinstated and 14 workmen who are not accepting the settlement. The plea of discrimination and the reasoning adopted by the Industrial Tribunal on the basis of discrimination is obviously misconceived. It has been noticed by the Industrial Tribunal and is not in dispute that the terms of settlement were offered to all the workmen including the concerned 14 workmen. Not getting reinstatement under the settlement was their option and not the act of employer. The acceptance of the settlement is still open to the respondents even now. The acceptance or non acceptance of the settlement offered to all the workmen without discrimination is the matter of personal volition. Any person cannot be forced to accept the settlement unless it takes legal shape as envisaged under sec.2(P) and falls within the purview of sec.18(3) to bind those persons also who are not party to the settlement. That being the position, at the present stage, those persons to whom similar terms have been offered, but have not been accepted voluntarily, no ground of discrimination on that basis can hold water.

7. It has further been noticed that in the first instance offer of settlement was common to all the workmen including the respondents. When the respondents made application to be reinstated in terms of the settlement without prejudice to their right to challenge the validity of the settlement, an offer was made during the proceedings for grant of interim relief on behalf of the management that if the respondent workmen want to continue with the dispute, then they are prepared to offer them employment as fresh recruit at that stage without prejudice to the rights of the respondent/workmen to continue with the dispute. That offer was rejected by all those workmen before the Labour Court. That is to say that the opportunity to get back on the job while keeping alive the dispute referred to the Tribunal about the validity of the termination and any benefit arising therefrom as a result of adjudication was not acceptable to the workmen. In other words, interim relief which could only have reference to securing job during pendency of the petition was refuted by the workmen themselves. This clearly goes to show that why they wanted to be reinstated with continuity of services with full advantage thereof. At the same time keeping the dispute as to the quantum compensation offered by way of backwages and to enter the field of employment as victorious class of workmen against those who have accepted the amount offered under the settlement, to end their dispute and to return to the job to the envy of

those workmen who had chosen to end the dispute. The fact of refusal both to settlement and alternatively to assume duties as fresh appointees without prejudice to the right to continue with the dispute disclose the clear intention on the part of the respondent- workmen that priority was not to get job; priority was to see that the dispute is kept alive. The primary object of the Industrial Disputes Act is to foster industrial peace. The Industrial Tribunals and Labour Courts while adjudicating the disputes referred to it have to keep in view this basic objective in determining the rights claimed by the concerned parties on the betterment of conditions of service of the workmen for whose benefit the Act has been promulgated. If that is kept in view it appears that the Labour Court while considering the interim relief application on behalf of the respondent-workmen have totally lost sight of the effect of unconditional reinstatement of the workmen who constitute microscopic minority compared to those who accepted the settlement and in their not accepting the employment without prejudice to the contentions in the reference as a fresh recruit clearly indicated tendency to disturb the existing peace that has been restored between the large number of workmen and the management. In my opinion, such an interim relief obviously works at cross purposes of main object of adjudicating system. Such an order cannot be allowed to sustain. No other reason except discriminatory treatment towards 14 workmen as a result of giving effect to the settlement has been made out for grant of interim relief. At that stage; if the basis of settlement is taken out no other ground is made out for continuing with the interim relief. Terms of settlement cannot be extended in piecemeal.

8. The learned counsel for the respondents invited my attention to the Civil Application filed on their behalf in which a prayer has been made that the management may be directed to pay to these workmen regular pay scale from the date provided under the settlement being 15.3.1996 with arrears and quantum of Rs.4500/- per month with effect from 1.11.1998. This clearly indicates the ulterior purpose, for making application for interim relief, other than to secure job. This is apart from the fact that I have found merit in Special Civil Applications; one filed by the management and another by the Karmachari Union. I set aside the order of the Industrial Tribunal.

9. The Civil Application further discloses that the respondents are on one hand trying to scuttle the settlement, but want piecemeal acceptance of it laying

claim to higher wages as if reinstatement offered was independent of terms of settlement. Law is well settled. Neither the court nor a party can accept the award in part. It is a process of give and take. It is just and fair to be accepted as a whole if not to be rejected as a whole. In the latter case relief can follow only through adjudication and not by relying on a stillborn settlement. This Civil Application has no merits and is hereby dismissed. This would not prejudice the entitlement of the respondent/ workmen to the benefits under sec.17B of the Industrial Disputes Act, for which affidavits have been filed and to which they are entitled as a mandate from the statute during the pendency of these petitions challenging the order of reinstatement by way of interim relief.

10. Accordingly, both the Special Civil Applications succeed. The impugned order dated 14.3.1997 of the Industrial Tribunal granting interim relief is set aside. Rule is made absolute with no order as to costs. The Civil Application is dismissed with no order as to costs.

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